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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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**KILLAM v. NORFOLK & W. RY. CO.**

March 21, 1918.

[96 S. E. 506.]

**1. Railroads (§ 222 (2)\*)—Damage to Private Property—Liability.**—Whether a railroad maintaining a switch yard and tracks from its main yard to coal piers was acting in its private capacity, or in its public capacity with legislative privilege of consequential damage to private property without liability, rests on principles existing prior to and independently of the Constitution of 1902.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 516.]

**2. Corporations (§ 382½\*)†—Public Service Corporation—Acts in Private Capacity.**—A public service corporation may act in a private capacity as distinguished from its public capacity.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 565.]

**3. Corporations (§ 382½\*)†—Public Service Corporation—Legislative Powers—Damage to Private Property.**—If a public service corporation, in constructing and maintaining its works, acts in its public capacity, a general legislative authority to do so, unless limited by constitutional provisions, confers immunity from liability for damages not imposed by statute; the rule of *damnum absque injuria* applying.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 565.]

**4. Corporations (§ 382½\*)†—Public Service Corporation—Action in Private Capacity—Damages.**—When a public service corporation acts in its private capacity, mere general legislative authority to establish and operate its works will not give it immunity from liability for damages therefrom, which would have been deemed a private nuisance at common law.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 516.]

**5. Corporations (§ 382½\*)†—Public Service Corporation—Action in Private Capacity—Damages.**—If its works are not constructed for public duties for which a public service corporation was incorporated, but as incidental or appurtenant thereto, their operation is in

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

†New in Vol. 16 Key-Number Series.

its private capacity, and the rule, "Sic utere tuo ut aliénium non lædas," controls the construction of the legislative enactment.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 565; 10 Va.-W. Va. Enc. Dig. 516.]

**6. Corporations (§ 382½\*)†—Public Service Corporatic Action in Private Capacity—Damnum Absque Injuria.**—General legislative authority of a public service corporation to construct and operate works in its private capacity will not be construed by implication to confer immunity from liability for damages therefrom, and the harsh rule of damnum absque injuria has no application.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 516.]

**7. Railroads (§ 222 (2)\*)—Operation—Nuisance—Damages.**—When railroad appurtenances such as a roundhouse, switchyards, repair shops, or terminal plant cause a nuisance to neighboring property by reason of noise, smoke, cinders, vibration, etc., there may be a recovery.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 516.]

**8. Railroads (§ 222 (2)\*)—Terminal Switchyard—Action in Private Capacity—Damages.**—A railroad, which acquired the yards and tracks of a terminal company performing no public service, and used them incidentally in switching cars from its main terminal to coal piers over an embankment and distributing tracks, was not acting in its public capacity, and was liable for a nuisance damaging neighboring property.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 516.]

Error to Circuit Court of City of Norfolk.

Action at law by Alice J. Killam against the Norfolk & Western Railway Company. Demurrer to the plea overruled, and judgment for defendant, and plaintiff brings error. Order set aside, demurrer sustained, and case remanded.

*Mann & Tyler*, of Norfolk, for plaintiff in error.

*Hughes, Little & Seawell*, of Norfolk, and *W. R. Staples*, of Roanoke, for defendant in error.

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CARPENTER *v.* MEREDITH.

March 21, 1918.

[96 S. E. 635.]

**1. Pleading (§ 339\*)—Amendment—Withdrawal of Second Amended Declaration—Effect.**—Where plaintiff was allowed to file second amended declaration and on same day was allowed to withdraw it, the withdrawal, where filing and immediate withdrawal did

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

†New in vol. 16 Key Number Series.